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October 6, 2021

Via ECF

MEMO ENDORSED

Hon. Laura Taylor Swain, U.S.D.J.
United States District Court, Southern District of New York
500 Pearl Street, Room 755
New York, NY 10007

Re: AMCO Insurance Co., et al. v. CoBank, ACB; 16-cv-4422 (LTS) (SLC)

Dear Judge Swain:

We represent Defendant, CoBank ACB (“CoBank”) in this matter, and write to request a brief adjournment of the final pre-trial conference, now scheduled for December 3, 2021, in light of a pending private mediation.

In its Memorandum Opinion and Order, filed September 14, 2021 (amended on September 22, 2021), the Court scheduled a final pre-trial conference for December 3, 2021, at 11:00 a.m., and separately directed the parties to contact Magistrate Judge Sarah L. Cave to arrange for a settlement conference. In response to Judge Cave’s directive, the parties provided her with several proposed dates in early November for such a settlement conference. In their letter, the parties also informed Judge Cave that they have engaged a private mediator, Peter L. Borowitz, Esq., of Debevoise & Plimpton LLP, to assist in their negotiations. In response, Judge Cave did not set a specific date for a settlement conference before her but directed us to keep her informed of the progress of mediation with Mr. Borowitz.

Mr. Borowitz’s process does not entail scheduling a specific date for mediation. Rather, he engages in a form of “shuttle diplomacy” between the parties in an effort to achieve a settlement. CoBank is hopeful that, within 30-60 days, this process will result in either a resolution or recognition of the need to move forward to trial on the issue of damages.

Under the Court’s Pre-Trial Scheduling Order of October 18, 2016 (as amended), the scheduling of the final pre-trial conference triggers a number of filing deadlines, the first of which comes due in less than two weeks. In an effort to avoid potentially unnecessary expense and diversion of resources to preparing for trial while the parties are engaged in good faith settlement negotiations, CoBank proposed to plaintiffs’ counsel that the parties jointly request a

brief (approximately 60 day) adjournment of the final pre-trial conference. Plaintiffs' counsel has now informed us that they oppose such an adjournment, necessitating this application.

A brief adjournment of the final pre-trial conference until early February is appropriate. First, the parties are engaged in settlement negotiations under the auspices of an experienced and highly effective mediator, Mr. Borowitz. The additional legal expense and costs associated with the submission of pre-trial filings, as well as preparation of the parties' damages experts (and the associated fees of such experts) will be wasted if a settlement is reached over the next 60 days.

Second, the brief adjournment CoBank is suggesting will allow the parties and counsel to focus on settlement. CoBank believes the prospects of settlement are enhanced if the parties can engage in negotiations without the distraction entailed in preparing simultaneously for trial on the issue of damages.

Finally, although we appreciate plaintiffs' desire to proceed to judgment given that this case has been pending for five years, CoBank has no interest in unduly delaying entry of the final judgment, which CoBank intends to appeal if a settlement is not reached. Insofar as the Court has ruled against CoBank on the issue of liability, pre-judgment interest at the statutory rate of 9% per year (far above market rates or the federal post-judgment interest rate) is accruing on whatever amount is ultimately awarded in the final judgment. Moreover, CoBank is fully capable of satisfying such a judgment, or bonding the judgment pending appeal. Thus, plaintiffs will not be prejudiced by the short delay CoBank is proposing.

For the foregoing reasons, CoBank respectfully requests that the Court adjourn the final pre-trial conference until a date in early February convenient to the Court.

Respectfully,

A handwritten signature in black ink, appearing to read 'JL RL A, -'.

Shawn Patrick Regan

cc: Counsel of Record

The Court has reviewed the parties' respective submissions regarding the requested adjournment and has determined that the adjournment is warranted in light of the circumstances set forth above. Accordingly, the final pretrial conference in this matter is hereby adjourned to February 7, 2022, at 2:00 p.m. Docket entry no. 178 is resolved.

SO ORDERED.

10/12/2021

/s/ Laura Taylor Swain, Chief USDJ